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Response to Comments on Proposed Amendments to:

310 CMR 7.00 Air Pollution Control
310 CMR 7.00 Definitions
310 CMR 7.03 Plan Approval Exemption: Construction Requirements
310 CMR 7.24 Organic Material Storage and Distribution

Regulatory Authority:
M.G.L. c. 111, Sections 142A through 142M

December 19, 2014

In February 2013, the Massachusetts Department of Environmental Protection (MassDEP) proposed amendments to 310 CMR 7.00 Air Pollution Control to:

(1) amend existing definitions and add new definitions at 310 CMR 7.00 pertaining to Stage I and Stage II vapor recovery;
(2) amend existing Plan Approval Exemption requirements at 310 CMR 7.03 to ensure consistency with new definitions; and
(3) amend existing Organic Material Storage and Distribution requirements at 310 CMR 7.24 to require regulated gasoline dispensing facilities to decommission their Stage II systems and install enhanced Stage I vapor controls.

These amendments will be submitted to the U.S. Environmental Protection Agency (EPA) for inclusion in the Massachusetts Ozone State Implementation Plan.

MassDEP held public hearings and solicited oral and written testimony on the proposed regulations in accordance with Massachusetts General Law Chapter 30A. On February 10, 2014, MassDEP published a notice in the Boston Globe announcing the schedule of public hearings and public comment period on the proposed regulatory revisions. Public hearings were held on March 11, 2014 in Lenox; March 12, 2014 in Worcester; March 13, 2014 in Bourne; March 18, 2014 in Boston and Wilmington; and March 20, 2014 in Holyoke. The comment period closed on March 31, 2014.

This document summarizes and responds to comments that were received during the public comment period. Those who provided comments are listed below:

1. Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, Region I (EPA)
2. Dave Berberian, Compliance Solutions, Rochdale, MA
3. Bruce Garrett, President, Dependable Petroleum Services, Plymouth, MA
4. Tim Moll, President, Mass Marine Trades Association, Milton, MA
5. Peter Romano, President, Independent Oil Marketers Association of New England, North Falmouth, MA
6. Kevin Walsh, Director, Massachusetts Department of Transportation

1. Comment: Require EVR PV Vent Valves Only Upon Decommissioning. MassDEP should require Enhanced Vapor Recovery (EVR) pressure vacuum (PV) vent valves upon decommissioning of Stage II systems, but not require that EVR PV vent valves be installed within 180 days of the effective date of the regulation for existing Stage II systems since they are not CARB certified to operate with EVR PV vent valves. Also, requiring these valves to be installed before decommissioning contradicts 310 CMR 7.24(6)(b)1a.

Response: MassDEP currently requires all regulated gasoline dispensing facilities (GDFs) in Massachusetts to operate with PV vent valves. MassDEP proposed requiring EVR PV vent valves to reduce VOC emissions from Stage I systems. In response to this comment, and to reduce the burden on GDFs, in the final regulation MassDEP has changed the deadline for installing EVR PV vent valves and rotatable adapters from within 180 days of the effective date of the regulation to upon decommissioning of Stage II systems, but no later than two years from the effective date of the final regulations.

2. Comment: Stage I EVR and Stage II Operating Requirements are Contradictory. The proposed requirement for all GDFs to install EVR PV vent valves contradicts the existing requirement for Stage II systems to be operated and maintained according to the terms of the applicable Stage II CARB executive order.

Response: The final regulation requires GDFs to install PV vent valves upon decommissioning of Stage II systems, but no later than two years from the effective date of the amended regulation (see response to Comment #1 as well).

3. Comment: Include References to Future CARB Executive Orders. 310 CMR 7.24(3)(c)1. only allows for current Stage I CARB EVR certified systems. There is no mention of future CARB-certified systems or components.

Response: To ensure proper public notice, comment and review of any proposed changes to regulations, MassDEP does not establish requirements based on potential or future standards. Therefore, the final regulation lists only those CARB executive orders that were issued as of the promulgation date of the final regulations. MassDEP will periodically update these regulations as necessary to include future CARB orders.

4. Comment: Clarify Timeline for Commencing Operation after Installation/Substantial Modification. Regarding 310 CMR 7.24(3)(e)3., does MassDEP have to receive the form for installation or substantial modification prior to commencing operation? Or is the completion of testing sufficient, provided documentation is submitted to MassDEP within 7 days?

Response: MassDEP has clarified the final regulation at 310 CMR 7.24(3)(e)3 to make clear that a GDF may commence operations after passing all applicable tests. The Installation/ Substantial Modification Certification must be submitted to MassDEP within 7 days after the test date.

5. Comment: Clarify Notification Requirements for Stage II Testing Companies that Also Conduct Stage I Testing. Will all current Stage II testing companies have to notify MassDEP prior to conducting Stage I testing?

Response: Yes. Every two weeks, in accordance with 310 CMR 7.24(3)(h)4., the Stage I Testing Company owner or operator shall submit to MassDEP a list of all facilities at which the Testing Company is scheduled to perform Stage I compliance tests.

6. Comment: Allow Slip-on Spill Buckets. The regulations do not address the use of slip over spill buckets. This style of spill bucket is Underwriter's Laboratory approved for use in containing overfills on underground storage tanks (USTs); however, it is not connected to the Stage I system thus preventing volatile organic compounds (VOCs) from entering the atmosphere. There are no slip-on buckets listed in any CARB executive order since they are not part of the Stage I systems. The use of slip on spill buckets would greatly benefit the program since it would reduce potential leak points.

MassDEP should allow for the continued use of slip-on spill buckets since they are not a source of vapor leaks and replacement costs will be around $10,000 per UST. Screw-on spill buckets can be a source of vapor leaks if not installed and maintained properly because they are screwed on to the fill risers. Slip-on buckets are secured to a continuous length of riser pipe so, while there is a potential for a liquid leak or spill, there is no potential for a vapor leak.

Response: MassDEP recognizes that many GDFs currently use slip-on spill buckets that are not part of a CARB EVR Stage I system. Under the proposed regulations, slip-on spill buckets could continue to be used until they needed to be replaced or by 7 years of the effective date of the final regulations, whichever came first, and then an EVR spill bucket would be needed (none of which currently are slip-on). To provide more time to transition to EVR systems, the final regulations allow the continued use and repair/replacement of slip-on spill buckets for 7 years. After 7 years, existing non-EVR slip-on spill buckets may continue to be used until replaced, but new spill buckets installed would need to be EVR. While the final regulations provide more flexibility for slip-on spill buckets, they still require an eventual transition to Stage I EVR spill buckets. MassDEP believes having the entire Stage I system and/or all components certified to meet the rigorous EVR specifications provides the best vapor capture system.

7. Comment: Adopt Most Recent CARB Executive Order for Existing ASTs. In a document dated March 13, 2014, CARB extended the date for aboveground storage tank (AST) Stage I EVR requirements for existing ASTs due to EVR systems not yet being available. This should be incorporated in the regulations.

Response: The commenter is correct. On March 13, 2014 CARB issued Executive Order G-70-216 that delays the effective date of Stage I EVR requirements for existing ASTs that have one of four design parameters: (1) no-top filling capacity (2) cannot accommodate an emergency vent (3) have less than three bungs available for vapor recovery components; or (4) do not have a

product bung with a diameter of 4 inches. MassDEP has incorporated this executive order into the final regulation.

8. Comment: Exempt Low Through-put GDFs from Co-Axial Phase-Out. MassDEP should allow low through-put facilities to install a poppeted co-axial drop tube. Many smaller facilities do not have an extra tank riser that will allow the Stage I drybreak to be installed. Excavating to the top of the tank to find an available hole will be costly and in some cases impossible. A poppeted coaxial drop tube should be allowed to be installed at these facilities. MassDEP also should allow GDFs with co-axial systems to repair and replace them with conventional components.

Response: MassDEP recognizes that requiring GDFs with co-axial systems to install a dual-point system likely will require the UST to be replaced, which is a significant cost. Therefore, the final regulations allow the continued use of existing co-axial systems until such time that the UST is replaced, at which point the new UST would need to be equipped with a CARB EVR dual-point Stage I system/component system. The final regulations also allow GDFs with existing coaxial systems to install poppeted co-axial drop tubes (which are needed to pass the 2-inch pressure/decay test), and to repair/replace these drop tubes as needed with non-EVR components until the UST is replaced and a dual-point EVR system/component system is installed.

9. Comment: Limit Spill Bucket Inspections to one Time Per Week. The proposed new requirement to inspect the Stage I system within 24 hours of a motor fuel delivery is redundant and overly burdensome given that some GDFs have deliveries once a day, and sometimes twice a day. If a Stage I system passes the proposed robust annual testing requirements, and weekly inspections are performed, no additional inspection should be required. There are multiple requirements to inspect spill buckets found in the UST and Vapor Recovery regulations. Only one set of regulations should require these inspections and once per week should be more than adequate. With the new testing requirements for spill buckets, a small amount of liquid in a spill bucket for less than a week should pose no environmental risk.

Response: MassDEP agrees that weekly inspections of Stage I systems (as is required by the current Stage II program) is sufficient and therefore the final regulations maintain the requirement for weekly inspections but do not require inspections within 24 hours of a fuel delivery.

10. Comment: Allow for Conventional and Over-fill Drop Tubes. Since Stage I EVR CARB Executive Orders allow for conventional and over-fill drop tubes, MassDEP should allow for their use as well. Failing to do so would result in MassDEP effectively dictating that overfill drop tubes are the method of overfill protection that must be used at stations, which contradicts what is allowed by existing and proposed UST rules.

Response: The proposed and final regulations at 310 CMR 7.24(3)c.1 list CARB Executive Orders that allow for either EVR straight drop tubes or EVR drop tubes with over-fill prevention devices (often referred to as flapper valves). Since both types of drop tubes are identified in the CARB orders, both types of drop tubes may be used.

11. Comment: Include EMCO-Wheaton before Regulations are Final. The Stage I EVR system by EMCO Wheaton may soon receive certification from CARB. MassDEP should include this system in the final regulations.

Response: The EMCO Wheaton Stage I EVR system was certified by CARB on August 27, 2014 and has been included in the final regulation.

12. Comment: Level of Training is too High for Weekly Inspections. The proposed regulations state that visual inspections be performed by a person who is trained to operate and maintain the Stage I system in accordance with the applicable Executive Orders and manufacturer's guidelines. Certified testing companies that perform routine maintenance and annual testing should fully understand these Executive Orders and manufacturer's guidelines. However, for any inspections performed by station personnel (e.g., weekly inspections), the visual inspections should be just that, a visual inspection. The inspection should focus on whether the swivel adapters are in place, the caps are on, the P/V vent valve is present and that product is not present in containment.

Response: In the final regulations MassDEP has clarified that persons who conduct visual inspections of Stage I systems should be trained in accordance with applicable manufacturers' guidance but do not need to be trained in or know the details of applicable CARB Executive Orders. Stage I visual inspections are intended to be similar to visual inspections that GDFs have performed on Stage II systems. Any person inspecting a Stage I system should have a basic understanding of how the system works, and the facility owner/operator must ensure that these persons have received basic training to ensure they understand how to operate and maintain the Stage I system according to the applicable manufacturer's guidelines, including how to conduct routine, visual inspections. Visual inspections are required on a weekly basis and include inspection of co-axial adaptors, fuel and vapor rotatable adaptors, dust caps and gaskets, fuel and vapor spill buckets, drain valves, and pressure/vacuum vent valves.

13. Comment: Allow 7 days for Stage I Inspection Records Submittal. MassDEP should change the Stage I inspection records submittal deadline from within 48 hours to within 7 days.

Response: MassDEP agrees with this comment and has changed the records request submittal deadline to within 7 business days of the initial request.

14. Comment: Clarify Testing Requirement. MassDEP should clarify that CARB TP-201.1D is not required within 7 years of the effective date of the regulation if EVR drop tubes are not yet installed.

Response: MassDEP has clarified the language for this testing requirement to indicate that compliance tests CARB TP 201.1C (Leak Rate of Drop Tube/Drain Valve Assembly Test) and CARB TP 201.1 D (Leak Rate of Drop Tube/Overfill Prevention Device) apply only to EVR equipment.

15. Comment: Recommence Operations and Notification after Stage II Decommissioning. In the case of Stage II decommissioning, MassDEP should allow GDFs to recommence operations after passing the required tests, without having to first submit the Stage II Decommissioning Notification. In addition, GDFs should have up to 30 days to deliver the notification paperwork to MassDEP.

Response: The final regulation has been revised to allow GDFs to recommence operations after passing the required tests and requires the decommissioning forms to be submitted no later than thirty days after the required tests have been passed.

16. Comment: MassDEP should exempt Marinas from Stage I EVR Requirements
Most marinas have been exempt from Stage II requirements due to their small scale. Under the proposed regulations, most marinas would now be subject to Stage I EVR requirements. MassDEP should reconsider this and exempt marinas. The cost of EVR Stage I equipment is too high, and will outweigh the benefits of supplying fuel, leading marinas to the decision to no longer provide fuel. This in turn will force many vessels to travel further to re-fuel, thus negatively off-setting any environmental gains of EVR. Exempting marinas would maintain the intended pollution reduction benefits.

Response: Marinas have been subject to basic Stage I requirements since 1991, including using submerged filling and a vapor balance system (see 310 CMR 7.24(3) Distribution of Motor Vehicle Fuel). There are over 100 marinas in Massachusetts that dispense gasoline. MassDEP recognizes that some of these facilities may have a relatively low through-put; however, others dispense many thousands of gallons of fuel per week.

Since MassDEP is enhancing Stage I requirements, all gasoline tanks (above 250 gallons) will be subject to the same Stage I requirements to reduce the amount of vapors emitted during the filling of the tanks. Requiring marinas to upgrade to Stage I EVR will reduce the amount of vapor emissions from these tanks during filling – especially during the summer ozone season. The regulation has not been changed.

17. Comment: Use the term "Gasoline Dispensing Facility" GDF. MassDEP should amend the definition of Motor Vehicle Fuel to replace the term "Motor Vehicle Fuel Dispensing Facility" with "Gasoline Dispensing Facility." The term GDF is a more accurate description of the regulated activities and would be more clear and useful to the regulated community.

Response: MassDEP did not make this change and believes the existing term is adequate.

18. Comment: Change the Definition of "Monthly Throughput." MassDEP should change the definition of "Monthly Throughput" and add a separate term for "Annual Throughput." Change "Monthly Throughput" by keeping the first sentence and deleting the remainder of the definition. Add a separate definition for "Annual Throughput" that reads: "Annual Throughput is calculated by summing the volume of motor vehicle fuel loaded into, or dispensed from, all motor vehicle fuel storage tanks at a motor vehicle fuel dispensing facility during the current day, plus the total volume of motor vehicle fuel loaded into, or dispensed from, all motor vehicle fuel storage tanks at a motor vehicle fuel dispensing facility during the previous 364 days."

Response: MassDEP did not change the definition of "Monthly Through-Put" because it is based on the federal definition established under the National Emission Standards for Hazardous Air Pollutants.

19. Comment: Clarify Whether Decommissioned Stage II Piping Can Remain Connected to the UST. MassDEP should make it clear in the regulation whether or not an owner who decommissions a Stage II system can choose to leave the decommissioned Stage II piping connected to the tanks. PEI RP 300 is not 100% clear on whether the piping can remain connected to the tanks. An owner should be able to make a decision based on his/her comfort level as to whether or not they will choose to leave the abandoned stage II piping connected to the UST or not.

Response: The regulation requires owners and operators to adhere to decommissioning procedures described in section 14 of the PEI Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle-Fueling Sites (PEI/RP300-09). The decommissioning procedure allows Stage II vapor piping to be left in the ground, but it requires that the vapor piping be securely capped in several locations (see sections 14.6.5 through 14.6.7). The guidance indicates that the vapor piping may be left connected to the UST when the piping is inaccessible. Specifically, section 14.2 has a note that states "NOTE: Below-grade Stage II vapor piping will in many cases remain connected to the tank and will contain vapors after it has been decommissioned. The integrity of this piping will be verified in any subsequent pressure decay testing that may be conducted." In addition, section 14.6.7 states "Disconnect the Stage II piping from the tank only if this procedure can be done without excavation." Thus, the guidance requires that vapor piping be disconnected from the tank if it is accessible (e.g., the connection is

located in a tank-top sump) but the piping may be left connected to the tank if disconnecting the piping would otherwise require excavation.

Other Changes. In the final regulation MassDEP included an exemption for certain motor vehicle fuel storage tanks at motor vehicle salvage yard operations from the majority of Stage I requirements. This is based on a similar exemption in the Stage II regulations. The addition can be found in the Applicability section at 310 CMR 7.24(3)(a).

MassDEP also updated references to four CARB Executive Orders that were revised since the draft regulations were proposed, including:

- VR-102O, OPW Phase I Vapor Recovery System, dated October 3, 2014
- VR-301F, Standing Loss Control of Vapor Recovery Systems for New Installations of Aboveground Storage Tanks, dated June 3, 2014
- VR-302F, Standing Loss Control of Vapor Recovery Systems for New Installations of Aboveground Storage Tanks, dated June 3, 2014, and
- VR-401D, OPW Enhanced Vapor Recovery (EVR) System for Above Ground Storage Tanks (AST), dated May 12, 2014.